

been the other way. For these reasons we allowed the appeals.

Appeals allowed.

Solicitors: *Allen & Gledhill; J.B. Jeyaretnam & Co.; L.A. J. Smith.*

**M.V. "JAG SHAKTI", OWNERS & ORS.
INTERESTED v. CHABBRA CORPORATION
PTE. LTD.**

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) August 19, 1982]
[Singapore – Civil Appeal No. 32 or 1981]

Shipping Law – Carriage of goods by sea – Wrongful delivery – Carriers sued – Damages.

Shipping Law – Bills of lading – Delivery to party without production of original bills of lading – Wrongful delivery.

This was an appeal against a judgment of the High Court under which the respondents recovered S\$389,117.62 (US\$110,000.00), interest thereon and costs. The said sum was fixed by the learned trial judge on the arrived market value of the goods. He, however, based the arrived market value of the goods on the amount of the indemnity given by the receivers of the goods at destination to the appellants' agent without production of the original bills of lading.

The respondents had sued in contract as indorsees of two bills of lading. The appellant as carriers had delivered the goods, 5,000 metric tons of edible salt to Mumtazuddin & Sons at Chittagong against their indemnity, which was countersigned by the Rupali Bank of Bangladesh without the production of the original bills of lading duly endorsed. The respondents had claimed US\$220,000.00 as the value of the goods on the basis that they had bought the goods from the I.O.C. at US\$110,000.00 and had sub-sold the same to Mumtazuddin for US\$220,000.00. The learned trial judge based the value of the goods on the Calcutta suppliers' invoices of the goods totalling US\$110,000.00 as the amount of the damages which the respondents had suffered. He did not say anything about the alleged sub-sale of the goods by the respondents to Mumtazuddin.

By a respondents' notice, the respondents sought an increase of the value of the goods from US\$110,000.00 to US\$220,000.00 on the basis that there was a sub-sale.

Held: (1) the respondents, as indorsees for value and holders of the bills of lading were party to the two contracts of carriage with the appellants as the carriers as contemplated by the operation of the Bills of Lading Act, 1855. The respondents were therefore entitled to sue the carriers in contract;

(2) in the circumstances, the respondents were not entitled to recover on the basis of the arrived market value of the goods. They were entitled to recover as they had

incurred under the two letters of credit. They were accordingly entitled to recover the sum of \$275,620.82;

(3) Mumtazuddin & Sons, not having paid for the goods were not entitled to the possession of the Bills of Lading and therefore were not entitled to the delivery which was wrongful.

Cases referred to:—

- (1) *Sewell v. Burdick* (1884) 10 A.C. 74.
- (2) *London Joint Stock Bank (Ltd.) v. British Amsterdam Maritime Agency Ltd.* [1910] 16 Com. Cas. 102.

COURT OF APPEAL.

Denis Murphy for the appellants.
C. Arul for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): This is an appeal against a judgment of the High Court under which the Respondents recovered the sum of \$389,117.62 (equivalent to US\$110,000.00), interest thereon and costs. The sum of \$389,117.62 was fixed by the learned trial judge on the arrived market value of the goods. He, however, based the arrived market value of the goods on the amount of the indemnity given by the receivers of the goods at destination to the Appellants' agent without production of the original bills of lading.

The Respondents had sued in contract as indorsees of two bills of lading to whom the property in 5,000 metric tons of edible salt ("the goods") had passed or, alternatively, in tort, for conversion of the same.

The Appellants as carriers had delivered the goods to Mumtazuddin & Sons ("Mumtazuddin") at Chittagong, Bangladesh against their indemnity, which was countersigned by the Rupali Bank of Bangladesh, without the production of the original bills of lading duly endorsed. The Respondents had claimed US\$220,000/- as the value of the goods on the basis that they had bought the goods from Indian Overseas Corporation ("IOC") of Calcutta, India at US\$110,000/- C&F Chittagong and had sub-sold the same to Mumtazuddin for US\$220,000/-. The learned trial Judge based the value of the goods on the Calcutta suppliers' invoices of the goods totalling US\$110,000/- as the amount of the damages which the Respondents had suffered. He did not say anything about the alleged sub-sale of the goods by the Respondents to Mumtazuddin.

By a Respondents' notice, the Respondents sought an increase of the value of the goods from US\$110,000/- to US\$220,000/- on the basis that there was, as the learned trial Judge ought to have found, a sub-sale.

On the other hand, the Appellants contended before us that IOC had in truth and in fact sold 7,000 metric tons of edible salt to Mumtazuddin under a written contract date May 20, 1977, of which the goods were a part, and that one K.C. Sharma who had caused the bills of lading to be endorsed to the Respondents, had agreed to finance Mumtazuddin's purchase of the goods by arranging for the issues of the Letters of Credit by two banks in Singapore. In the circumstances, the Appellants contended that they had delivered the goods to the true owner and the Respondents being mere pledgees had no cause of action against them, relying on *Sewell v. Burdick*⁽¹⁾ 74.

It is plain beyond doubt from the contemporaneous documents that the facts are as follows. By a contract in writing date May 20, 1977 IOC agreed to sell to Mumtazuddin 7,000 tons of edible salt at US\$22/-per ton C&F Chittagong/Chalna, Bangladesh. The suppliers were Bihar Supply Syndicate of Calcutta who in writing had contracted to sell to IOC 21,000 metric tons of salt plus or minus 10% at US\$22/-per ton C&F Chittagong/Chalna, Bangladesh by three ship loads of 7,000 metric tons per ship. The fact that IOC was not making a profit was because it was permitted by reason of the export of the goods to import certain scheduled goods into India to the value of one-third the value of any goods exported by it. One K.C. Sharma, who with his wife were the two partners of a Singapore firm, Altas Enterprises, agreed with Mumtazuddin that Altas Enterprises would finance Mumtazuddin by causing Letters of Credit to be opened by banks in Singapore in favour of IOC to pay for the goods.

In the event, Altas Enterprises caused the Singapore branch of the United Commercial Bank and Banque Nationale de Paris to open the Letters of Credit for the respective sums of US\$30,800/- and US\$79,200/- to pay for 1,400 metric tons and 3,600 tons of sale respectively. It was agreed before us that Altas Enterprises incurred the sum of \$275,620.82 in respect of the two Letters of Credit, bank charges and insurance premia. The Letters of Credit were made transferable and Bihar Supply Syndicate was duly paid. Bihar Supply Syndicate shipped the goods on board the Appellants' sister vessel, m.v. "Jag Dhir"

and the bills of lading Nos 1 and 2 for 1,400 metric tons and 3,600 tons of salt, which were issued by the Appellants' agents, were generally endorsed by Bihar Supply Syndicate and handed over to the paying banks who eventually sent them to the opening banks. Having paid the opening banks, Altas Enterprises caused the bills of lading to be endorsed over to the Respondents for value.

In the meantime, Mumtazuddin took delivery of the goods from the Appellants without the production of the original bills of lading against their indemnity which was countersigned by the Rupali Bank.

The Respondents, who were not sellers then, invoiced Mumtazuddin for US\$220,000/- and sent the bills of lading through their bankers for collection from Mumtazuddin who refused to take up the documents and pay. The Respondents accordingly sued the Appellants as carriers and obtained judgment in the court below for US\$110,000/-.

With reference to the cross-appeal of the Respondents for US\$220,000 on the basis of an alleged sub-sale by them to Mumtazuddin, there was no evidence before the trial judge of a sub-sale and the Respondents' cross-appeal must accordingly fail.

We disagree with the Appellants' contention that the Respondents had no title to sue in contract as indorsees to whom property had passed or in tort for conversion. Counsel for the Appellants relied on *Sewell v. Burdick*. A good summary of the effect of this decision is found in the editors' note to Article 93 in *Scrutton on Charterparties and Bills of Lading*, 18th edn. It says as follows:

"The decision in *Sewell v. Burdick* has made it clear that the effect of the indorsement of a bill of lading depends entirely on the particular circumstances of each indorsement and that there is no general rule that indorsement passes the whole legal property in the goods, as had been strongly contended by Brett M.R. in the court below, and in *Glyn, Mills & Co v. East and West India Docks*. In the light of this decision, the special verdict in *Lickbarrow v. Mason*, which recites that 'the property is transferred by indorsement,' must be read 'the property which it was the intention to transfer is transferred'; ..."

Having regard to the arrangements made between Mumtazuddin and Sharma, it was the plain intention of Mumtazuddin that the suppliers of the goods could on shipment transfer the property in the goods by generally endorsing the bills of lading, as they did, to the banks opening the letters

of credit and eventually to Altas Enterprises or as Altas Enterprises shall order. The Respondents became the endorsees for value and holders of the bills of lading. They became a party to the two contracts of carriage with the Appellants as the carriers, as contemplated by the operation of the Bills of Lading Act, 1855. The Respondents are therefore entitled to sue the carriers in contract. In the circumstances, the Respondents are not entitled to recover on the basis of the arrived market value of the goods. They are entitled to recover what they had incurred under the two letters of credit. They are accordingly entitled to recover the said sum of \$275,620.82. As for interest thereon, it should be payable from the dates the suppliers of the goods were paid under the letters of credit and therefore should run from August 5, 1977.

Insofar as conversion is concerned, the Respondents are in exactly the same circumstances as the successful plaintiff bank in *London Joint Stock Bank (Limited) v. British Amsterdam Maritime Agency Limited*⁽²⁾. Mumtazuddin, not having paid for the goods, were not entitled to the possession of the Bills of Lading and therefore were not entitled to the delivery which was wrongful.

We accordingly dismiss the appeal with costs, but the judgment of the Court below is varied so that Respondents recover the sum of \$275,620.82 and interest thereon at 12% per annum from August 5, 1977 up to date hereof.

Appeal dismissed.

Solicitors: *Godwin & Co; Karthigesu & Arul.*

TAN SONG GOU v. GOH YA TIAN

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.)

August 19, 1982]

[Singapore - Civil Appeal No. 83 of 1981]

Practice & Procedure - Agreed bundle of documents - Admission without formal proof - Police report in agreed bundle - Submission of no case to answer - Evidence Act (Cap. 5), ss. 17 and 18.

Tort - Negligence - Car hit from behind.

The respondent in this appeal owned a taxi, SH. 4490 which he hired to one Tan Ah Lek. On June 21, 1978 the taxi driven by Tan Ah Lek was involved in a motor accident. In his police report of the accident Tan Ah Lek said

that the taxi was "hit from the rear by Datsun pickup GF. 6797 E".

The Datsun pickup was driven by Tan Song Gou, the appellant. In his police report Tan Song Gou said that he was following behind taxi SH. 4490 along Jurong Port Road when he was knocked from behind by motor crane No. 0857 S forcing his pickup to collide into the rear of the taxi.

The motor crane was owned by Walter Wright (S) Pte. Ltd. and driven by one Abdullah. In his police report, Abdullah said that as he was approaching Jurong Interchange all vehicles came to a halt. The pickup overtook his motor crane and swerved left into the empty space in front of his vehicle. At that moment of time, the vehicles ahead came to a halt. As a result his vehicle knocked the rear of the pickup.

The respondent commenced proceedings in the District Court against appellant as driver of the pickup and Walter Wright (S) Pte. Ltd. and another defendant, United Equipment Services (S) Pte. Ltd. At the trial certified true copies of the said police reports were by agreement admitted in evidence as an Agreed Bundle of Documents. The trial magistrate dismissed the claim. He held that the mere production of the police reports did not prove the alleged negligence of the defendants.

Lai Kew Chai J. instead reversed the trial court's decision and allowed the appeal (see [1981] 2 M.L.J. 317). Lai Kew Chai J. held that the three police reports, which were in the Agreed Bundle of Documents and admitted in evidence, formed part of the evidence before the court and that in the absence of other evidence, the respondent had proved on a balance of probabilities that both the driver of the pickup and the driver of the motor crane were negligent. The appellant appealed against the said decision.

Held, dismissing the appeal: (1) the appellant's police report was the documentary statement in which he stated that his pickup collided into the rear of the taxi while the taxi was stationary. It was admitted by the appellant that his pickup collided into the rear of Tan Ah Lek's stationary taxi. It was admitted in evidence by agreement of the parties as one of the documents in the agreed bundle and its contents accordingly need not be proved by calling the person who recorded the statement;

(2) by virtue of that admission, Tan Ah Lek had adduced evidence at the trial that the appellant's pickup collided into his stationary taxi, and in the absence of other evidence, the court was entitled to come to the conclusion that the damage to the said taxi as a result of the collision was due to the negligence of the appellant;

(3) the court was in agreement with Lai Kew Chai J. that the proper practice, if counsel for a defendant wished to make a submission of no case to answer, was for the judge to refuse to rule on it unless counsel elects to call no evidence.

COURT OF APPEAL.

Simon Yuen for the appellant.

Joseph Gay for the respondent.

Cur. Adv. Vult.